

This letter describes the tax liability of a serviceman providing health and medical record processing services. See 86 Ill. Adm. Code 140.101. (This is a PLR).

July 26, 2005

Dear Xxxxx:

This letter is in response to your letter dated March 24, 2004 in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, hereinafter 'Taxpayer', FIRM respectfully requests a letter ruling from the state of Illinois as to the proper application of state and local sales and use taxes to the transactions identified below. To the best of the Taxpayer's and our knowledge, the Department has not ruled on this issue or a similar issue for the Taxpayer. The Taxpayer or Taxpayer's representatives have not previously submitted this issue or a similar issue to the Department. Currently, Taxpayer does not have an audit or pending litigation with the Department and requests a response for the current tax period and all future tax periods. Due to the unique nature of Taxpayer's fact pattern and subsequent transactions, Taxpayer could not find authorities to support or challenge the taxability of the following transactions.

#### **STATEMENT OF FACTS**

Taxpayer provides health and medical record processing services to attorneys, insurance companies, governmental entities, patients, physicians, hospitals, and other requesting parties, hereinafter ('Customers'). Taxpayer's services are performed by Taxpayer's employees utilizing equipment (i.e. laptop computers, scanners, etc...)

provided by Taxpayer. These services are performed by Taxpayer's employees from hospitals, physicians' offices, or employees' home offices; which are located in the state of Illinois.

In practice, upon Taxpayer receiving a request from customers for a copy of a patient's health and medical records, hereinafter ('Information'), Taxpayer will visit the hospital, physician's office, or other location where the particular information is located. Upon arriving at the hospital, physician's office, or similar location where the particular information is located, employees may facilitate the customer's request by either one of two methods.

#### METHOD ONE

Method one encompasses Taxpayer utilizing a laptop computer, scanner, or other similar electronic medium to electronically 'scan' and save the requested information. Upon securing the scanned information, the employee electronically transmits the scanned information to Taxpayer's facility in CITY/STATE. When the information is received at Taxpayer's STATE facility, the information is processed and, depending on the customer's election, either an electronic version of the information is transmitted to the customer or a hardcopy version is printed and mailed to the customer.

#### METHOD TWO

Method two encompasses an employee visiting the hospital, physician's office, or location where the medical records and related information are located to physically photocopy the requested information. Upon the requested information being photocopied, the employee will subsequently mail the requested information to the customer from the hospital, physician's office, or location where the medical records and related information are located.

#### INVOICE COMPONENTS

Upon providing any of the above services, the Taxpayer invoices the customer a separately stated charge for the requested service. Below please find the various possible components of a typical transaction, and an explanation of each component.

- Basic/Retrieval Fee: A separately stated flat fee charged for locating the records.
- Quickview Delivery Fee: A separately stated fee to electronically access and view the contents of the delivered information via the Internet.
- Per Page Fee: A separately stated fee for each page of the medical record that is either scanned or photocopied.
- Postage Fee: A separately stated fee for the postage associated with mailing a hardcopy of the individual's medical record. This fee does not contain a markup for profit.
- Handling Fee: A separately stated charge, distinct from the charge for postage, associated with mailing a hardcopy of the individual's medical record.
- E-Disclose Fee: A separately stated fee to track and confirm the status of the information being delivered.
- Certification Fee: A separately stated fee to certify the information.
- Notarization Fee: A separately stated fee to notarize the information.

- Deposition Fee: A separately stated fee to affirm that the information is suitable to be utilized in a legal deposition.
- Docustore Fee: A separately stated fee to electronically store the information.

## ISSUES

Since Taxpayer provides employees with tangible personal property (scanners and computers) to perform the above services within the state of Illinois, the Taxpayer has concluded that it has nexus for sales and use tax purposes. Consequently, the Taxpayer would like the state's assistance concerning the following:

- 1) Are the separately stated 'Basic/Retrieval Fees', as defined above, subject to sales tax?
- 2) Are the separately stated 'Quickview Delivery Fees', as defined above, subject to sales tax?
- 3) Are the separately stated 'Per Page Fees', calculated on a per page basis for photocopying information subject to sales tax?
- 4) Are the separately stated 'Per Page Fees' calculated on a per page basis for scanning information into an electronic format subject to sales tax?
- 5) Are the separately stated 'Postage Fees', as defined above, subject to sales tax?
- 6) Are the separately stated 'Handling Fees', as defined above, subject to sales tax?
- 7) Are separately stated 'E-Disclose Fees', as defined above, subject to sales tax?
- 8) Are separately stated 'Certification Fees', as defined above, subject to sales tax?
- 9) Are separately stated 'Notary Fees', as defined above, subject to sales tax?
- 10) Are separately stated 'Deposition Fees', as defined above, subject to sales tax?
- 11) Are the separately stated 'Docustore Fees', as defined above, subject to sales tax?
- 12) Are the scanners, laptop computers, and similar electronic media utilized in Method One and/or Method Two services deemed processing equipment so as to be exempt from sales and use tax when purchased?

If the Department/Division of Taxation/Revenue has any questions or requires any additional information from the Taxpayer in order to provide Illinois sales and use tax consequences of the above described situations, please contact #.

Thank you in advance for your cooperation and attention to this matter.

## **DEPARTMENT'S RESPONSE:**

In answering your letter-ruling request, the following background on the Illinois Service Occupation Tax and Use Tax is helpful in order to put our response in context.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Based upon the information in your letter, TAXPAYER is acting as a serviceman in Illinois and would likely qualify as a de minimis serviceman that is not otherwise required to be registered under

Section 2a of the Retailers' Occupation Tax Act. We are basing our response on the understanding that the annual aggregate cost price of tangible personal property transferred by TAXPAYER as an incident of the sales of service described in your letter is less than 35% of the total annual gross receipts from its service transactions. In addition, we understand that no separately stated fee is charged to the customers for the "hardcopy version" or "requested information" representing the written reports provided to the customers. We are also basing our response on the understanding that, except for a written (hardcopy) report, no other tangible personal property is transferred to the company's customers incident to the providing of these services.

#### Method One

For Method One described in your letter, you have stated that the customer can elect to receive either an electronic version or hardcopy version of the information.

##### Electronic Version:

When the information is electronically delivered to a customer and no other tangible personal property is transferred to that customer incident to the providing of its services, TAXPAYER incurs no Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax on that service transaction.

##### Hardcopy Version:

If the information transferred to a customer in a written (hardcopy) version is transferred to that customer incident to the providing of its services, TAXPAYER incurs Illinois Use Tax on the cost price of the documents (hardcopy version) transferred to its customers in Illinois. However, any documents mailed to the customer from a location outside of this State may not be subject to use tax in this State if control over those documents occurs completely outside of this State. The forgoing may be applicable as long as the hardcopy documents that are sent to customers in Illinois were not created originally as hardcopy documents in Illinois and then shipped back into Illinois. For example, please see Department General Information Letter Ruling No. ST-02-0174. No tax is incurred on the charges to the customers for any of the fees listed in your letter. Please note again that this determination is based upon the understanding that none of the fees charged to the customers are for the written reports provided to those customers.

#### Method Two

For Method Two described in your letter, you have stated that the employee physically photocopies the requested information and mails the information (photocopies) to the customer. TAXPAYER incurs Illinois Use Tax on the cost price of the documents (hardcopy version) transferred to its customers in Illinois.

#### Equipment Use In Illinois

The scanners, laptop computers, or other equipment used in Illinois by TAXPAYER are subject to Illinois Use Tax liability on TAXPAYERS' cost price of that equipment. No sales or use tax exemption is available for equipment used in this manner. Please note that a credit will be given for any tax that was properly due and paid in another state on the purchase of that equipment. See Ill. Adm. Code 150.310(a)(3).

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the

material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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